

FINDING OF EMERGENCY  
Readoption of Emergency Regulations

California Secure Choice Retirement Savings Investment Board  
CalSavers Retirement Savings Program  
Title 10, Chapter 15, Sections 10000-10007

The California Secure Choice Retirement Savings Investment Board (Board) intends to Readopt these regulations on an emergency basis for the immediate preservation of the public peace, health, safety, or general welfare, within the meaning of Government Code Section 11346.1.

Government Code Section 11346.1(a)(2) requires that at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. To this end, the Board posted the proposed emergency regulations on its website and simultaneously disseminates notice of the proposed emergency action to all persons who have filed a request for notice.

After submission of the proposed emergency regulations to the Office of Administrative Law (OAL), the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6. To determine the Office of Administrative Law five-day comment period, please check <http://www.oal.ca.gov/>. The Board will also provide additional notice of the five-day comment period through email notification.

FINDING OF EMERGENCY

Pursuant to Government Section 100048, the California Legislature has deemed the adoption, amendment, repeal, or readoption of regulations necessary to implement Government Code Title 21 to address an emergency.

Readoption of the emergency regulations is necessary to ensure the emergency regulations remain in effect while the California Secure Choice Retirement Savings Investment Board (Board) completes the regular rulemaking process. The Board proposes no changes to the text of the emergency regulations being submitted for readoption.

NECESSITY FOR EXTENSION

At the November 6, 2018 meeting, the California Secure Choice Retirement Savings Investment Board ("Board") approved a revised set of proposed regulations and authorized the Executive Director of the Program to initiate the emergency rulemaking process. Those regulations were approved by the Office of Administrative Law (OAL) and took effect November 19, 2018.

On January 18, 2019, the Board posted proposed regulations for the regular rulemaking process and their agenda item on its website and distributed notice to members of the public who subscribed to the Program's Listserv. The Program also shared the proposed regulations with stakeholders who indicated an interest in being updated about the regulations and notified them about the pending Board action. At the January 28, 2019 meeting, the Board adopted those proposed regulations and granted staff the authority to conduct the formal rulemaking process.

Staff filed the regulations with OAL February 19, 2019 and the proposed action was published in the California Regulatory Notice Register March 1, 2019, commencing the public comment period. The public comment period closes April 15, 2019.

## AUTHORITY AND REFERENCE

Authority: Section 100048 of California Government Code provides the California Secure Choice Retirement Savings Investment Board (“Board”) the authority to adopt regulations to implement Title 21 of the California Government Code and deems the adoption, amendment, repeal, or readoption of a regulation authorized by the section to address an emergency for purposes of Sections 11346.1 and 11349.6 of the California Government Code, and thereby exempts the Board from the requirements of subdivision (b) of Section 11346.1.

Reference: Sections 100000, 100002, 100010, 100012, 100014, 100032, 100034, 100043, 100046, and 100048, California Government Code.

## INFORMATIVE DIGEST

In 2012, the California Legislature enacted and the Governor signed Senate Bills (SB) 1234 and (Chapter 734, Statutes of 2012) and SB 923 (Chapter 737, Statutes of 2012) which established the California Secure Choice Retirement Savings Investment Board and required it to conduct a market analysis to determine whether the necessary conditions for implementing the California Secure Choice Retirement Savings Program (subsequently changed to the “CalSavers Retirement Savings Program” through Assembly Bill 1817 in 2018) could be met. The legislation required the Board to determine, based on the market analysis, if necessary conditions can be met and prohibited implementation of the Program without subsequent legislation to authorize it.

In 2016, the California Legislature enacted and the Governor signed SB 1234 (Chapter 804, Statutes of 2016) which, among other things, granted the Board the authority to take the steps necessary to implement the Program, including the adoption of regulations.

The Board is authorized under 100048 to adopt regulations it deems necessary to implement the Program consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure that the program meets all criteria for federal tax-exempt benefits. Government Code Section 100048 deems the adoption, amendment, repeal, or readoption of such regulations to address an emergency for purposes of Government Code Sections 11346.1 and 11349.6 and thereby exempts the Board from the requirements of Government Code Section 11346.1(b).

The process for developing the proposed regulations began in the summer of 2017 with a series of meetings with informal working groups composed of representatives from employer and business organizations in the state, organizations representing employees, non-profit organizations focused on financial empowerment and economic inclusion, and others. Staff conducted several program design feedback meetings with these informal working groups in late-summer 2017.

Staff began providing regular updates on the development of regulations at public Board meetings beginning with the August 28, 2017 Board meeting, focusing the initial [presentations](#) on the input of the informal working groups. Staff provided a [second update](#) on the input of the informal working groups at the September 25, 2017 Board meeting, summarizing the input of working group members on design elements of the Program, including development of regulations. Staff provided an in-depth [presentation](#) on options and recommendations for regulations at the October 23, 2017 Board meeting. To prepare the materials for the meeting, staff consulted with stakeholder organizations, program consultants, policymakers at the state and federal level, non-profit organizations, and peer-reviewed research. Each of these meetings were open to the public and

informal public comment periods were established. Copies of each comment letter were shared with the Board during the Board meeting.

At the November 27, 2017 Board meeting, [staff presented the Board](#) with a preliminary draft of the regulations. Following that meeting, staff solicited comments from the public on the draft regulations in writing and invited members of the public to participate in two workshops on the draft regulations held [December 5 and December 7, 2017](#). Members of the public could participate in the December 5, 2017 meeting in-person or by phone. The December 7, 2017 workshop had been scheduled to be held in a public setting in Los Angeles and by phone, but the in-person workshop was cancelled due to wildfires spreading in the area. Instead, staff conducted that workshop entirely by phone. [Written comments](#) were posted publicly on the Program website.

At the December 18, 2017 Board meeting, staff presented a [summary of comments received](#), as well as copies of all written comment letters. Following that meeting, staff incorporated direction given by the Board to develop a set of [proposed regulations](#), presented to the Board at the February 26, 2018 Board meeting. At the meeting, the Board approved the content of the regulations and authorized the Executive Director of the Program to initiate the emergency rulemaking process. The Board ultimately decided to wait to initiate rulemaking until it had hired a third-party administrator to operate the Program. The hiring of a third-party administrator allowed the Board to refine regulations to add specific details regarding the processes and timeframes under which employers and participants can comply with the regulations.

On September 24, 2018, the California Secure Choice Retirement Savings Investment Board (“Board”) approved the proposed regulations and authorized Program staff to initiate the rulemaking process. The Board filed regulations October 12, 2018 and withdrew the proposed regulations October 26, 2018 to make edits to the regulations.

The Board posted a Notice of Emergency Rulemaking November 1, 2018. At the November 6, 2018 meeting, the Board approved proposed regulations and authorized staff to conduct the emergency rulemaking process. The emergency regulations were approved by OAL and took effect November 19, 2018.

At the January 28, 2019 meeting, the Board approved proposed regulations and authorized staff to begin the regular rulemaking process. The Board issued a notice of proposed rulemaking action March 1, 2019, beginning the public comment period. The public comment period closes April 15, 2019.

In general, these proposed emergency regulations will implement, interpret, and make specific the rules, policies, and procedures governing the CalSavers Retirement Savings Program. Specifically, these regulations would accomplish the following:

- a. Define terms and definitions used in the regulations and further clarify the meaning of definitions in statute;
- b. Define employer eligibility for the Program and establish the means by which the Program shall determine such eligibility;
- c. Establish the deadlines and processes by which eligible employers shall register for the Program;
- d. Define the duties for participating employers and the processes by which participating employers shall comply with the requirements of the Program;
- e. Establish processes for enrollment of eligible employees into the Program;
- f. Define the default account settings for participants that do not make an alternative election;
- g. Define the alternative elections available to participants;
- h. Establish policies for participation of individuals in the Program outside of an employment relationship with an Eligible Employer;

- i. Define processes and policies for contributions, distributions, and transfer of savings; and
- j. Define the policies for confidentiality and disclosure of information collected by the Program.

The adoption of these regulations is necessary for the operation of the CalSavers Retirement Savings Program. The regulations will further define and make specific sections of statute that either explicitly require regulatory definition or address sections of statute that could benefit from further clarification. Many of the regulations directly address questions of eligibility, processes, and duties received from members of the public.

The operation of the Program will result in some indirect benefits for participating employers and employees. For participating employers, the Program will provide employers with a retirement savings option that is simple and requires no direct costs or annual reporting, with no fiduciary liability. By having an easy way to provide a popular employee benefit, the Program should help some smaller employers improve their value in the labor market.

Implementation of these regulations will benefit participating individuals by providing them access to a workplace retirement savings program, increasing the likelihood they will accrue meaningful retirement savings and improve their financial security. The impact will depend on a number of factors, including whether and when an individual decides to participate in the Program, their decisions regarding how much they contribute and how they choose to invest their contributions, investment performance, and the Program's ability to reduce administrative fees.

#### AN EVALUATION OF WHETHER OR NOT THE PROPOSED REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Board evaluated whether or not there are any other regulations that may be adversely impacted by adoption of these proposed regulations. Because these regulations are solely for the purpose of operating the CalSavers Retirement Savings Program, and no other regulations exist in the California Code of Regulations pertaining to the operation of the CalSavers Retirement Savings Program, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

#### COST ESTIMATE

The program will be funded through administrative fees assessed on the assets invested in the Program. As established under Government Code Section 100050, startup costs for the Program are appropriated from the General Fund in the annual Budget Act in the form of a loan and shall be repaid through the fees assessed on the program fund, with interest calculated at the rate earned by the Pooled Money Investment Account. The Board evaluated potential indirect economic and fiscal impacts in the [Standardized Regulatory Impact Assessment \("SRIA"\) submitted to the Department of Finance August 31, 2018](#).

The Board estimates direct costs as follows:

- Costs or savings to any state agency: no impact
- Cost to any local agency or school district requiring reimbursement: no impact
- Nondiscretionary cost or savings imposed on local agencies: no impact
- Cost or savings in federal funding to the state: no impact

#### COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

There are no direct cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, there will be some

indirect opportunity costs for employers that register with CalSavers necessary to comply with the Program, detailed further in the [SRIA](#).

## BUSINESS REPORT

The proposed regulations do not require any reports to be made by any business or other entity.

## SMALL BUSINESS

Adoption of these regulations will impact small businesses through indirect opportunity costs, detailed further in the [SRIA](#).

## ALTERNATIVES INFORMATION

Alternatives considered by the Board include: a 3% default contribution rate, declining to implement automatic escalation, designating a biennial open enrollment period, prohibiting participation from individuals outside of an employment relationship, and establishing Traditional IRAs as the default IRA type. The Board decided against these alternatives for reasons further detailed in the [SRIA](#). In its notice of proposed rulemaking for permanent regulations, the Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the public comment period.

## LOCAL MANDATE STATEMENT

The proposed regulations do not impose any mandate on local agencies. There are no “state-mandated local costs” in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

## FISCAL IMPACT

These regulations do not impose a mandate upon local agencies or school districts. There are no “state-mandated local costs” established in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

There will likely be some indirect fiscal impacts due to adoption of the regulations through to changes to sales and use tax revenue due to new savings by individuals throughout the state. These impacts are detailed further in the [SRIA](#).

The Employment Development Department (EDD) may require approximately \$2,990,000 to fulfill their duties required under statute including distributing materials to employers. These costs would be reimbursed through an interagency agreement with the Board.

## SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Board has not identified any significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

## RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The adoption of these regulations could have an indirect impact on the creation or elimination of jobs within the state through changes to consumption and new investment resulting from new savings by CalSavers participants. As a result of the adoption of these regulations, new

businesses will not be created and current businesses will not be eliminated within the state. Additionally, neither benefits nor detriments are expected to worker safety or the state's environment due to adoption of these regulations.

#### TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT ON WHICH THE AGENCY RELIES

The considerations for development of these regulations were based, in part, on the market analysis, program design, and financial feasibility study commissioned by the Board and completed by Overture Financial LLC and its subcontractors in 2016. The report is available via the link below:

<http://www.treasurer.ca.gov/scib/report.pdf>

The Board considered the findings from additional studies and reports to make decisions about the content of the proposed regulations, included below:

1. Allegretto, S.A., Rhee, N., et. al., (2011), [California Workers' Retirement Prospects](#) in N. Rhee's [Meeting California's Retirement Security Challenge](#), U.C. Berkeley Center for Labor Research and Education
2. Baki, M., Rhee, N., et. al., (2016), [Final Report to the California Secure Choice Retirement Savings Investment Board](#), *Overture Financial LLC*
3. Belbase, A. and Sanzenbacher, G., (December 2015) [Report on the Design of Connecticut's Retirement Security Program](#), Center for Retirement Research at Boston College
4. Beshears, J., Choi, J., et. al., (September 2010) [Defined Contributions Savings Plans in the Public Sector: Lessons from Behavioral Economics](#), National Bureau of Economic Research
5. Beshears, J., Benartzi, S. et. al., (October 7, 2017) [How Do Consumers Respond When Default Options Push the Envelope?](#), Voya Behavioral Finance Institute for Innovation
6. Beshears, J., Choi, J., et. al., (December 7, 2017), [Borrowing to Save? The Impact of Automatic Enrollment on Debt](#), Harvard University/Yale University/United States Military Academy
7. Choi, J., Laibson, D., et. al., (December 2001) [For Better or For Worse: Default Effects and 401\(k\) Savings Behavior](#), National Bureau of Economic Research
8. Dushi, I., Iams, H.M., Lichtenstein, J., (2015), [Retirement Plan Coverage by Firm Size: An Update](#), Social Security Administration Office of Retirement and Disability Policy
9. Helman, R., Greenwald, M., et. al., (April 2007) [The Retirement System in Transition: The 2007 Retirement Confidence Survey](#), Employee Benefit Research Institute
10. John, D. and Koenig, G. (2015), [Workplace Retirement Plans Will Help Workers Build Economic Security](#), AARP Public Policy Institute
11. Madrian, B. and Shea, D., (May 2000) [The Power of Suggestion: Inertia in 401\(k\) Participation and Savings Behavior](#), National Bureau of Economic Research

12. McInerney, M., Rutledge, M. S., King, S. E., (October 2017), [How Much Does Out-of-Pocket Medical Spending Eat Away at Retirement Income?](#), Center for Retirement Research at Boston College
13. Morse, D, (October 25, 2018), [Letter to CalSavers Retirement Savings Program Executive Director Kathleen Selenski Regarding Implementation of CalSavers Retirement Savings Program](#)
14. Munnell, A. H., Belbase, A., Sanzenbacher, G.T., (March 2018), [An Analysis of Retirement Models to Improve Portability and Coverage](#), Center for Retirement Research at Boston College in conjunction with Summit Consulting, LLC
15. Pew Charitable Trusts (January 2016), [Employer-based Retirement Plan Access and Participation across the 50 states \(California\)](#)
16. Pew Charitable Trusts, (June 2017), [Employer Barriers to and Motivations for Offering Retirement Benefits](#)
17. Pew Charitable Trusts, (July 2017) [Employer Reactions to Leading Retirement Policy Ideas](#)
18. Pew Charitable Trusts, (March 2018) [Auto-IRAs could help retirees boost Social Security Payments](#)
19. Sanzenbacher, G. and Belbase, A., (June 2016) [Initial Contribution Rates and Automatic Escalation](#), Center for Retirement Research at Boston College
20. Scott, J., Blevins, A., et. al. (January 2016) [Who's in, who's out](#) *Pew Charitable Trusts*
21. Semega, J., and Welniak, Jr., E., (2015) [The Effects of the Changes to the Current Population Survey Annual Social and Economic Supplement on Estimates of Income](#), Proceedings of the 2015 Allied Social Science Association (ASSA) Research Conference
22. U.S. Government Accountability Office, (May 2016), [Low defined contribution savings may pose challenges](#)
23. Utkus, S. and Young, J., (2017) [How America Saves 2017](#), Vanguard
24. VanDerhei, J., (2015) [Auto-IRAs: How Much Would They Increase the Probability of 'Successful' Retirements and Decrease Retirement Deficits? Preliminary Evidence from EBRI's Retirement Security Projection Model](#), Employee Benefit Research Institute, Notes 36, no. 6 (2015): 11–29

## STATEMENT OF NECESSITY

The substantive sections of the regulations are identified below including a description of the objectives and necessity for each section. These regulations were structured in a manner that is consistent with programs that are not classified as an employee benefit plan subject to the federal Employee Retirement Income Security Act (ERISA), as required by Government Code Section 100043. In particular, the regulations have defined the roles and responsibilities of employers in a

manner that should not keep the program from being classified as an employee benefit plan subject to ERISA. The Board's external legal counsel submitted a legal opinion to the Executive Director affirming the conditions established for implementation of Government Code Section 100043 have been met.

*Section 10000, Definitions – subdivision (f) and (y).* The “Client Employer” and “TriParty Employment Relationships” definitions are necessary to further specify and define the eligibility of employers engaged in contracts with third-parties for the purposes of payroll, staffing, and employer compliance with laws and regulations. Because such relationships may result in a clearly identifiable employer responsible for compliance, these definitions were necessary to ensure employers in such relationships can clearly identify the responsible entity.

*Section 10000, Definitions – subdivision (g).* The “Compensation” definition is necessary to remove any doubt about the compensation referred to throughout the regulations. In particular, the definition is necessary to identify compensation means remuneration reported on an Internal Revenue Service (IRS) Form W-2. This specificity will further clarify a topic that has been asked of the program in the past of whether or not an independent contractor, whose wages are reported on an IRS Form 1099, will also be deemed Eligible Employees. Additionally, the definition is necessary to clarify that Compensation is not limited just to wages reportable on a Form W-2, but may also mean Earned Income by individuals that are a sole proprietor, partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or another self-employed individual. This was necessary to clarify a question commonly asked by the regulated community regarding whether employers that are also technically employees may participate in the CalSavers Retirement Savings Program (“CalSavers” or “the Program”).

*Section 10000, Definitions – subdivision (j).* The “Earned Income” definition is necessary to clarify how employers that are also employees can participate in the Program as their income may differ than the definition of “Compensation” typically used for employees.

*Section 10000, Definitions – subdivision (k).* The “Eligible Employee” definition is necessary to further specify the definition provided in statute. The definition specifies an employee must be at least age eighteen to participate in the program and clarifies that Eligible Employee can also mean a sole proprietor, partner, or member of a limited liability company if the sole proprietor, partnership, or Limited Liability Company is an Eligible Employer.

*Section 10000, Definitions – subdivision (l).* The “Eligible Employer” definition is necessary to further specify the “Eligible Employer” definition in statute. In particular, the definition in the proposed regulations further defines that an Eligible Employer is one that “maintains or contributes to” a Tax-Qualified Retirement Plan. Members of the regulated community have asked if there are any conditions required for such employers maintain or contribute to a Tax-Qualified Retirement Plan, i.e. whether the plan must be offered to at least one employee that would otherwise be eligible for CalSavers. This definition clarifies the Board is placing no qualifications or conditions on how such plans are maintained by Exempt Employers.

*Section 10000, Definitions – subdivision (n).* The “Employer” definition is necessary to further specify the definition of “Eligible Employer” in statute. In particular, the definition specifies employer can mean a sole proprietor, partnership, corporation, or other entity that is an employer under common law rules.

*Section 10000, Definitions – subdivision (o).* The “Exempt Employer” definition is necessary to further specify the definition in statute and identify the methodology to be used to define the number of an employer’s employees. As specified in Section 10001(a) of the regulations, the program will determine an employer’s number of employees by calculating the average number of employees in a calendar year based on the number of employees reported in an employer’s quarterly DE-9C report.

*Section 10000, Definitions – subdivision (r).* The “Opt-Out Form” definition is necessary to define a term frequently used in the regulations and make specific a term referred to in statute.

*Section 10000, Definitions – subdivision (s).* The “Participant” definition is necessary to define when the regulations apply to a Participating Employee, Participating Individual, or Beneficiary. In some instances, the regulations may only apply to either, whereas other sections of the regulations apply to rules that are consistent for either of the three types of participants.

*Section 10000, Definitions – subdivision (v).* Government Code Section 100012(k) compels the Board to evaluate and establish a process by which an individual or employee of a nonparticipating employer may enroll in and make contributions to the program. The “Participating Individual” definition is necessary to define an individual that participates in the program outside of a relationship with an Eligible Employer and to delineate it from the definition of “Participating Employee.”

*Section 10000, Definitions – subdivision (x).* The “Tax-Qualified Retirement Plan” definition is necessary to clarify and make specific the definition of “Eligible employer” in statute and Government Code Section 100032(g), a section of statute that relates to the definition of “Eligible employer” in statute. The definition is necessary to specify the types of Tax-Qualified Retirement Plans that will render an employer exempt from the requirements of statute. The program has received a significant amount of questions from employers about this topic.

*Section 10001, Eligible Employers – subdivision (a).* Government Code Section 100012(f) provides the Board the power and authority to determine the eligibility of an employer and Government Code Section 100032(b-d) identifies the deadlines by which employers must register with the Program, which varies according to the employer’s number of employees. The regulation specifies the number of employees will be determined based on the average number of employees in a calendar year as reported on the employer’s quarterly reports to the Employment Development Department. The regulation clarifies an issue of significant interest among the regulated community, particularly employers, as statute does not specify the exact method through which the program will determine an employer’s total number of employees. Some members of the regulated community recommended calculation of the average number of employees to account for seasonal fluctuations of employees. The regulation is also necessary to address a concern of the regulated community regarding employer non-compliance. Absent an annual average, some may infer that an employer’s number of employees means the number of employees employed on any given day, resulting in concerns that an employer could be out of compliance with statute if their number of employees either increases or decreases enough that they would fluctuate between compliance with the statute.

*Section 10001, Eligible Employers – subdivision (b).* This regulation is necessary to identify when an employer will cease to be an Eligible Employer and therefore cease participation in the

Program. Employers are exempt if either they employ fewer than five employees or provide a retirement plan. Depending on the cause, an employer would become exempt either immediately or only after a calendar year has elapsed. As established in Section 10001(a)(1), an employer will cease to be an Eligible Employer only when their average number of employees drops below five for a calendar year. Comparatively, an Eligible Employer will be an Exempt Employer upon the effective date of its adoption of, or participation in, a Tax-Qualified Retirement Plan.

*Section 10001, Eligible Employers – subdivision (c).* As noted above, some of the regulated community had concerns about how their compliance with statute could be impacted by seasonal fluctuations of their workforce. This regulation is necessary to provide the timeframes by which Eligible Employers that later become Exempt Employers will have to notify the Program about their eligibility change.

*Section 10001, Eligible Employers – subdivision (d).* This regulation is necessary to specify the processes through which the program, through the Employment Development Department, will begin to register employers. The regulation affirms that Eligible Employers will be required to register with the Program prior to their respective registration deadline and notes that Exempt Employers may, but are not required to, certify their exemption from the Program. The regulation also describes the methods through which employers may certify their exemption and provides the specific address, phone number, and internet address through which employers may complete the function.

*Section 10001, Eligible Employers – subdivision (e).* This regulation is necessary to further specify and define the eligibility of employers engaged in contracts with third-parties for the purposes of payroll, staffing, and employer compliance with laws and regulations. Because such relationships may result in a clearly identifiable employer responsible for compliance, these definitions were necessary to ensure employers in such relationships can clearly identify the responsible entity.

*Section 10002, Employer Registration – subdivision (a).* Government Code Section 100032(b-d) provides deadlines for employer registration with the program that vary according to an employer's number of employees. Government Code Section 100032(e) provides the Board authority to extend those time limits. This regulation is necessary to extend the deadlines by approximately 7.5 months and identifies specific dates for the employer registration deadlines.

*Section 10002(b), Employer Registration – subdivision (b).* The registration deadlines established in Section 10002(a) would apply to employers that are Eligible Employers on the first day the Program is launched. This regulation is necessary to identify the deadlines for employers to comply with the Program if either they are a new employer created after the implementation date or become eligible for the Program after the implementation date—either by ceasing to offer a Tax-Qualified Retirement Plan or by beginning to employ five or more employees. Absent this regulation, any new employer, or newly-eligible employer, could infer they are required to register by those deadlines – even if, for example, they become eligible just the day before the deadline.

*Section 10002, Employer Registration – subdivision (c).* This regulation is necessary to affirm that the deadlines are determined on the methodology established by Section 10001(a).

*Section 10002, Employer Registration – subdivision (d).* Some members of the regulated community have inquired if they could participate in the Program even if they already maintain or contribute to a Tax-Qualified Retirement Plan. Government Code Section 100012(k) compels the

Board to evaluate and establish a process by which an individual or employee of a nonparticipating employer may enroll in and make contributions to the program. Another regulation affirms some businesses may choose to facilitate payroll deductions for such participating individuals. This regulation is necessary to identify the limitations of activities that may be performed by Exempt Employers with regard to the Program.

*Section 10002, Employer Registration – subdivision (e).* This regulation requires employers to provide the Program information necessary to maintain each employer's account. The regulation will require Participating Employers to provide information including their business name, corporate name, or "doing business as" name; the Federal Employer Identification Number and California Employer Payroll Tax Account Number; mailing address; and the name, title, telephone number, and email address, if available, of the individual identified by the employer as the primary point of contact with the Program. Each piece of information is necessary to ensure the accuracy and security of employer accounts and ensure efficient administration of the Program's systems.

*Section 10002, Employer Registration – subdivision (f).* This regulation is necessary to identify the specific methods through which employers may register with the Program.

*Section 10003, Participating Employer Duties – subdivision (a).* Government Code Section 100032(f)(1) provides each eligible employee shall be enrolled in the Program unless the employee elects not to participate in the Program and 100012(h) compels the Board to design the processes for the enrollment of eligible employees. The enrollment method established in statute is commonly referred to as "automatic enrollment." In order for automatic enrollment to occur, the Program must first obtain the information necessary to establish a participant account—including an employee's name, social security or individual tax identification number, date of birth, mailing address, and, if available, phone number and email address.

*Section 10003, Participating Employer Duties – subdivision (b).* This regulation is necessary to require employers to provide the same information to the Program as required under Section 10005(a), within the same timeframes established in that regulation, for each new eligible employee hired after an employer has registered with the Program.

*Section 10003, Participating Employer Duties – subdivision (c).* This regulation is necessary to establish a deadline by which the employee information packet is delivered to all eligible employees and identify the means through which employers can accomplish the duty. The regulation identifies the process through which employers shall satisfy their statutory requirement by providing the Program with the employee information identified in subdivision (a) of this Section so the Program may deliver the employee information packet directly to the employee.

*Section 10003, Participating Employer Duties – subdivision (d).* This regulation is necessary to identify the method through which each employee's contribution rate shall be reported to the employer. Each Participating Employee may change their contributions at any time through the Administrator and the Administrator will communicate the rate to the employer through the Program's website. This section clarifies how the process will occur.

*Section 10003, Participating Employer Duties – subdivision (e).* Government Code Section 100034 provides that participating employers shall have no liability for an employee's decision to participate in, or opt out of, the Program or for their investment decisions. The Section also provides participating employers shall not be considered a fiduciary of the Program and have no

civil liability for acting pursuant to the statute or regulations. This regulation is necessary to further clarify the limitations on an employer's role referred to in statute. Specifically, the regulations make explicit that employers shall decline to give advice about the Program, or exercise any control over the program not explicitly granted in the regulations or statute.

*Section 10004, Employee Enrollment – subdivision (a).* This regulation is necessary to establish the timeframes by which an employee can choose to participate in the Program during the period after which an employer first begins to participate in the Program. The regulation would establish that Eligible Employees shall be enrolled in the Program if they do not opt out during a 30 day period after receiving the Employee Information Packet. The regulation would establish the same timeframe for an Eligible Employee hired by a Participating Employer after it has already begun participating in the Program.

*Section 10004, Employee Enrollment – subdivision (b).* Government Code Section 100014 requires the Program to include a disclosure form to be provided to each eligible employee and that the employee shall have a method to acknowledge they have read and understand the content of the form. This regulation is necessary to establish the method by which the program will deem an employee has read and understands the content of the disclosure form.

*Section 10004, Employee Enrollment – subdivision (c).* Government Code Section 100032(f)(1) provides "Each eligible employee shall be enrolled in the program unless the employee elects not to participate in the program..." This regulation is necessary to establish the specific methods through which an employee may elect to opt out of the Program. The regulation is also necessary to establish the information required by Employees to appropriately evidence the employee's understanding they are choosing to opt out of the Program.

Government Code Section 100032(f)(1) also establishes "...An eligible employee may elect to opt out of the program by making a notation on the opt-out form." Government Code Section 100014(e) requires the opt out form to be "...simple and concise and drafted in a manner the board deems necessary to appropriately evidence the employee's understanding that he or she is choosing not to automatically deduct earnings to save for retirement." The regulation would allow employees to opt out by mail or electronically by making a notation on the Opt-Out Form and by providing information required to appropriately evidence the employee's understanding they are choosing to opt out of the program—the last four digits of their Social Security Number, date of birth, ZIP Code, and, if submitting the form by mail, sign the completed form.

In addition to opting out by mail or electronically, eligible employees may also opt out by phone. This provision is necessary to allow the regulated community a variety of simple methods to opt out of the Program and is a method the Board deems appropriate to evidence the employee's understanding of their decision to opt out, as well as being an appropriately simple method for such employees to choose not to participate. To opt out by phone, eligible employees will be required to provide the last four digits of their Social Security Number, date of birth, and ZIP Code.

*Section 10004, Employee Enrollment – subdivision (d).* Government Code Section 100032(f)(3) states "An employee who elects to opt out of the program who subsequently wants to participate...may only enroll during the board's designated open enrollment period or if permitted at an earlier time." This regulation is necessary to establish such an employee may choose to enroll at a time earlier than the open enrollment period.

*Section 10004, Employee Enrollment – subdivision (e).* This regulation is necessary to clarify the methods through which employees shall be notified if the Administrator is unable to enroll them for any reason. The regulation would require the Administrator to notify the employer not to remit contributions within 30 days and notify the employee directly within 30 days.

*Section 10004, Employee Enrollment – subdivision (f).* Government Code Section 100032(f)(2) requires the Board to designate an open enrollment period at least every two years. This regulation is necessary to establish the period and frequency of open enrollment. The regulation would also establish that any employee that opted out within six months of the start of the Open Enrollment Period could not be automatically enrolled during the Open Enrollment Period.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (a)(1).* Government Code Section 100032(i) provides a participating employee shall contribute three percent of their compensation if they do not make an affirmative election otherwise, referred to as the default contribution rate. Government Code Section 100032(j) provides the Board authority to adjust the default contribution rate to no less than two percent and no more than five percent. This regulation is necessary to establish the default contribution rate as five percent.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (a)(2)(A-B).* “Automatic escalation” is a term frequently used in retirement programs to describe annual automatic increases of an individual’s retirement savings contributions. Government Code Section 100032(k) provides the Board the power to implement automatic escalation and limits the automatic escalation rates to no more than one percent annually, not to exceed eight percent of salary. This regulation is necessary to implement automatic escalation, establish that Participants will be contribute according to automatic escalation unless they choose not to, identify the date after which automatic escalation will occur for participating employees, establish the means through which a participating employee may choose to opt out of automatic escalation, identify the period of time an employee must participate in the Program before they participate in automatic escalation, and establish the minimum timeframe for the Program to notify participating employees about contribution rate changes due to automatic escalation.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (a)(3).* Government Code Section 100008 compels the Board to include one or more payroll deduction IRA arrangements. This regulation is necessary to establish the default IRA arrangement and affirm that the default IRA arrangement would be established for a Participating Employee if they have not established an IRA for themselves through the Program’s website. While the Program uses automatic enrollment, in which an individual that does not choose to opt out shall be enrolled in the Program, Eligible Employees may choose to enroll themselves directly by accessing the Program’s website – in addition to enrolling passively through automatic enrollment. When an Eligible Employee enrolls directly, they will establish their own IRA by actively enrolling. However, an Eligible Employee that enrolls passively through automatic enrollment must have an IRA established on their behalf.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (a)(4).* Government Code Section 100012(a)(2) provides the Board the power and authority to design and establish the

Program with the appropriate selection of default investments to encourage participation and savings according to sound investment practices. This regulation is necessary to establish the default investment options and specify how the default investment options will be designated depending on a participant's age.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (b).* This regulation is necessary to affirm a Participant may choose an alternative election at any time and provides the methods through which the Participant may make those elections.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (b)(1).* This regulation is necessary to define the alternative contribution rates a participating employee may choose. The regulation allows a participating employee to choose a contribution rate at any integer value between 0% and 100%.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (b)(2).* This regulation is necessary to establish the methods by which a Participating Employee may elect an alternative automatic escalation amount or choose to opt out of automatic escalation.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (b)(3-4).* This regulation is necessary to establish Participating Employees may contribute to their account directly outside of payroll contributions through electronic contributions or by personal check. The regulation establishes minimum contribution amounts for one-time contributions and recurring contributions. The regulation is also necessary to identify the definition for "recurring" contributions, defined as at least quarterly and by electronic contributions only.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (b)(5-6).* In addition to the default investment options, the Program will offer participants a range of other investment options. This regulation is necessary to identify the means through which a participant may choose to invest future contributions or change investments for existing contributions.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (b)(7).* This regulation is necessary to establish the maximum amount of time by which the alternative contribution elections shall be implemented.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (c)(1).* Government Code Section 100012(j) compels the Board to allow participating employers to make their own contributions to their employees' accounts if it would not cause the Program to be treated as an employee benefit plan under the federal Employee Retirement Income Security Act. The Board has decided not to allow such contributions due to concerns it would cause the Program to be treated as an employee benefit plan under the federal Employee Retirement Income Security Act. This regulation is necessary to prohibit employer contributions to their employees' accounts.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (c)(2).* Some employers are also employees of their business. This regulation is necessary to clarify that the regulation above does not preclude such employers from participating in the Program themselves.

*Section 10005, Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants – subdivision (c)(4).* This regulation is necessary to inform participants they may choose to make all or some of their contributions to a Traditional IRA when the feature is made available and to provide participants the location where notification of the availability of the feature will be posted.

*Section 10006, Individual Participation – subdivision (a).* Government Code Section 100012(k) compels the Board to evaluate and establish the process by which an individual or employee of a nonparticipating employer may enroll in and make contributions to the Program. This regulation is necessary to affirm that an individual or employee of a nonparticipating employer may participate in the Program when the feature is made available. The regulation is also necessary to identify the location at which notice will be posted of the availability of the feature. The regulation also limits participation to individuals at least eighteen years of age.

*Section 10006, Individual Participation – subdivision (b-c).* This regulation is necessary to establish minimum contribution amounts for one-time contributions and recurring contributions, as well as define the meaning of recurring contributions in terms of frequency and the methods through which recurring contributions can be made—limited to electronic contributions only.

*Section 10006, Individual Participation – subdivision (d).* This regulation is necessary to affirm the options available to Individual Participants are the same as the options available to any Participant, including default account settings and alternative elections.

*Section 10006, Individual Participation – subdivision (e).* This regulation is necessary to establish that businesses that facilitate remission of all or a portion of a participating individual's contributions are solely responsible for determining their payroll deduction IRA programs satisfy Internal Revenue Service and U.S. Department of Labor requirements. These businesses would naturally be exempt employers not subject to the requirements of the Program.

*Section 10007, Contributions and Distributions – subdivision (a).* This regulation is necessary to specify that it is the responsibility of the participant to determine if they are eligible for making contributions to a Roth or Traditional IRA and determine if their annual contributions are within the limits established by the Internal Revenue Code. This regulation affirms it is solely the responsibility of participants and not participating employers or another third party. This regulation does not preclude the Program from educating participants about eligibility requirements and annual contribution amounts.

*Section 10007, Contributions and Distributions – subdivision (b).* Transfers or rollovers out of a CalSavers account will be allowed at any time, including on the first day of program operation. However, due to a delay in developing the software necessary for it, transfers or rollovers into the account will not be allowed until the feature is developed by the program. This regulation is necessary to identify that rollovers or transfers into an account will not be available until later time and to provide individuals with an address at which they can learn when the feature is made available.